

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-81125-WRS

Chapter 13

LUDIE PITTS,

Debtor

MEMORANDUM DECISION

This Chapter 13 Bankruptcy Case came before the Court for hearing on the Debtor's motion to amend her Chapter 13 Plan on September 15, 2004. (Docs. 20, 21). The Debtor was present by counsel Michael Allan Mosley. Before discussing the specifics of this motion, the Court will review the history of this case.

The Debtor filed her petition in bankruptcy pursuant to Chapter 13 of the Bankruptcy Code on July 20, 2003. (Doc. 1). The Debtor's Chapter 13 Plan was confirmed on October 14, 2003. (Doc. 13). On August 24, 2004, the Debtor moved to amend her Chapter 13 Plan to add a \$480 bill for cell phone service incurred since the date of the petition. (Docs. 20, 21). For the reasons set forth below, the motion is DENIED.

A debtor may amend her Chapter 13 Plan after it is confirmed pursuant to 11 U.S.C. § 1329. Claims which arise after the date of the petition are not generally paid under the Plan, the exceptions are provided under the provisions of 11 U.S.C. § 1305. In a decision handed down last year, this Court discussed the practice of amending Chapter 13 Plans to provide for postpetition obligations. In re: Sims, 288 B.R. 264 (Bankr. M.D. Ala. 2003).

The problem here is that post-petition claims may be filed, and allowed, only for taxes and "consumer debts" for "property or services necessary for the debtor's performance under the

plan.” 11 U.S.C. § 1305(a). As discussed in Sims, these kind of postpetition claims are limited to things such as medical bills and automobile repairs. Things closely related to the Debtor’s ability to generate income to fund her plan. Living expenses, while in a broad sense, may be considered necessary, are not included within the scope of § 1305 to prevent the exception for swallowing up the rule. That is, if all living expenses were allowed under § 1305, debtors could undertake a never-ending cycle of incurring living expenses and amending her plan to pay them. To prevent this, the phrase “property or services necessary for the debtor’s performance under the plan,” is read narrowly, limiting these expenses to those directly related to the production of income. As the Debtor’s cell phone expenses do not meet this qualification, her motion is DENIED.

Done this 4th day of November, 2004.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Michael A. Mosley, Attorney for Debtor
Curtis C. Reding, Trustee